

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

TRUSTEES OF THE NATIONAL AUTOMATIC)
SPRINKLER INDUSTRY WELFARE FUND,)
TRUSTEES OF THE NATIONAL AUTOMATIC)
SPRINKLER LOCAL 669 UA EDUCATION FUND,)
TRUSTEES OF THE NATIONAL AUTOMATIC)
SPRINKLER INDUSTRY PENSION FUND, TRUSTEES)
OF THE SPRINKLER INDUSTRY SUPPLEMENTAL)
PENSION FUND AND TRUSTEES OF THE)
INTERNATIONAL TRAINING FUND)
8000 Corporate Drive)
Landover, MD 20785,)

Plaintiffs,)

v.)

) C.A. NO.

T & L COMMUNICATIONS, INC.)
2800 NE 65th Avenue, Suite A)
Vancouver, WA 98661-6894)

Serve: Lawrence E. Bushaw, CEO)
9908 NE 14th Street)
Vancouver, WA 98664)

and)

LAWRENCE E. BUSHAW)
9908 NE 14th Street)
Vancouver, WA 98664)

Serve: Lawrence E. Bushaw,)
9908 NE 14th Street)
Vancouver, WA 98664)

and)

CATHERINE LOUISE BUSHAW)
9908 NE 14th Street)
Vancouver, WA 98664)

Serve: Catherine Louise Bushaw,)
9908 NE 14th Street)
Vancouver, WA 98664)

Defendants.)

COMPLAINT

**(FOR BREACH OF COLLECTIVE BARGAINING AGREEMENT,
TO COLLECT CONTRIBUTIONS DUE TO PLAINTIFF FUNDS
AND FOR BREACH OF SETTLEMENT AGREEMENT)**

Parties

1. Plaintiffs Trustees of the National Automatic Sprinkler Industry Welfare Fund, Trustees of the National Automatic Sprinkler Local 669 UA Education Fund, Trustees of the National Automatic Sprinkler Industry Pension Fund, Trustees of the Sprinkler Industry Supplemental Pension Fund, Trustees of the International Training Fund (hereinafter "NASI Funds") are employee benefit plans as that term is defined in Section 3(3) of the Employee Retirement Income Security Act ("ERISA") of 1974, 29 U.S.C. § 1002(3). Plaintiff Funds are established and maintained according to the provisions of the Restated Agreements and Declarations of Trust establishing the NASI Funds (hereinafter "Trust Agreements") and the Collective Bargaining Agreement between Road Sprinkler Fitters Local Union No. 669 and the Defendant T & L Communications, Inc. (hereinafter "T & L"). The NASI Funds are administered at 8000 Corporate Drive, Landover, Maryland 20785.

2. Defendant T & L is a corporation existing under the laws of the State of Washington with offices located in Washington. Defendant transacts business in the State of Washington as a contractor or subcontractor in the sprinkler industry and all times herein was an "employer in an industry affecting commerce" as defined in Sections 501(1), (3), 2(2) of the Labor-Management Relations Act, 29 U.S.C. Sections 142(1), (3) and 152(2); Section 3(5), (9), (11), (12), (14) of ERISA, 29 U.S.C. Sections 1002(5), (9), (11), (12), (14); and Section 3 of the Multi-Employer Pension Plan Amendments of 1980, 29 U.S.C. § 1001(a).

3. Defendant Lawrence E. Bushaw is the Chief Executive Officer and a Governor of the Defendant T & L and is a resident of the state of Washington.

4. Defendant Catherine Louise Bushaw is a Governor of the Defendant T & L and resident of the state of Washington.

Jurisdiction

5. This Court has jurisdiction of this action under Sections 502 and 515 of the Employee Retirement Income Security Act, 29 U.S.C. §§ 1132 and 1145, and under Section 301 of the Labor-Management Relations Act, 29 U.S.C. § 185(a). This is an action for breach of a Collective Bargaining Agreement between an employer and a labor organization representing employees in an industry affecting commerce and an action to collect contributions due to employee benefit plans under the terms of the Collective Bargaining Agreement and an action for breach of a Settlement Agreement and Promissory Note.

COUNT I

6. Defendant T & L is signatory to a Collective Bargaining Agreement with Road Sprinkler Fitters Local Union No. 669 (hereinafter referred to as "the union") requiring contributions to the NASI Funds for each hour of work by employees performing installation of automatic sprinkler systems.

7. Defendant T & L is bound to the Trust Agreements and to the Guidelines for Participation in the NASI Funds (hereinafter "Guidelines").

8. Defendant T & L employed certain employees covered by the Collective Bargaining Agreement during the period of November 2013 through the present.

9. The Defendant T & L has experienced substantial difficulty in making the required benefit contributions owed to the NASI Funds. In response to these difficulties, the NASI Funds and said Defendant entered into a Settlement Agreement and Promissory Note (hereinafter "settlement documents") allowing for a systematic payment over time of all amounts owed to the NASI Funds. These settlement documents required, inter alia, the payment of the

principal amount of \$145,149.62 by said Defendant to the NASI Funds in monthly installment payments over a period of thirty-six months. The settlement documents further provided that the Defendant T & L remain current in all future contributions to the NASI Funds for the duration of the settlement and file all monthly report forms and payments on time as required by the Funds' Trust Agreements. Liquidated damages in the amount of \$60,272.32 were waived contingent upon the Defendant T & L making each and every one of the scheduled payments as they became due under this Agreement and contingent upon the Defendant remaining current in its monthly contributions for the duration of the settlement.

10. Defendants Lawrence E. Bushaw and Catherine Louise Bushaw (hereinafter collectively referred to as "the personal guarantors") personally executed these settlement documents pursuant to which they committed themselves to act as guarantors for all amounts owed by the Defendant T & L to the NASI Funds inclusive of future monthly contributions owed to the NASI Funds for the duration of the settlement.

11. The Defendant T & L defaulted on the terms of the settlement documents by failing to pay complete contributions owed to the NASI Funds for the months of July 2018 through January 2019 and by failing to make the monthly settlement payment due on January 15, 2019. Pursuant to the terms of the settlement documents, Defendant T & L is in default and the amount of \$179,526.64 for contributions and reinstated liquidated damages currently owed under the settlement documents is immediately due and payable to the NASI Funds.

12. Defendant T & L has failed to make complete contributions due to Plaintiff Funds on behalf of its employees for the months of July 2018 through December 2018. Pursuant to remittance reports prepared and submitted by the Defendant T & L, contributions are owed to the Plaintiff Funds in the amount of \$30,881.59 for those months. Pursuant to the terms of the

Collective Bargaining Agreement, Defendant is obligated to submit report forms and pay contributions owed to Plaintiff Funds.

13. Defendant T & L has failed to make contributions due to Plaintiff Funds on behalf of its employees for the month of January 2019. In addition, Defendant has failed to submit report forms for this month. Pursuant to the terms of the Collective Bargaining Agreement, Defendant is obligated to submit report forms and pay contributions owed to Plaintiff Funds.

14. Pursuant to Article VI, Section 6 of the Restated Agreements and Declarations of Trust establishing the NASI Funds, when an employer fails to file the properly completed report forms, in order to determine the amounts due, the Funds are authorized to project the delinquency amount using the following formula:

. . . The Trustees may project as the amount of the delinquency the greater of (a) the average of the monthly payments or reports submitted by the Employer for the last three (3) months for which payments or reports were submitted, or (b) the average of the monthly payments or reports submitted by the Employer for the last twelve (12) months for which payments or reports were submitted . . .

15. Using report forms submitted for the last three (3) months for which reports were submitted, the projected delinquency for the month of January 2019 is \$11,368.04 calculated as follows:

<u>Month</u>	<u>Hours</u>
October 2018	444.5
November 2018	573.0
December 2018	464.0
Average Monthly Hours:	493.8

<u>Rates in Effect</u>	<u>2019</u>
Welfare	\$10.02
Education	\$ 0.42
Pension	\$ 6.60
SIS	\$ 5.88
ITF	\$ 0.10

16. Defendant T & L's partial contributions owed on behalf of its sprinkler fitter employees for the months of August 2018 through November 2018 were paid late. The specific amounts paid and the date in which the Defendant T & L's contributions were received by the NASI Funds are set forth on the attached breakdown (Exhibit A).

17. Defendant T & L's partial contributions owed on behalf of its sprinkler fitter employees for the months of July 2018 through December 2018 are late.

18. Pursuant to the Trust Agreements and the Guidelines for Participation in the NASI Funds, an employer who fails to pay the amounts required by the Collective Bargaining Agreement on time shall be obligated to pay liquidated damages as follows:

- (1) If payment is not received in the Funds Office by the 15th of the month, 10% of the amount is assessed.
- (2) An additional 5% is added if payment is not received in the Funds Office by the last working day of the month in which payment was due.
- (3) An additional 5% is added if payment is not received by the 15th of the month following the month in which payment was due.

19. Pursuant to this provision, Defendant T & L is obligated to Plaintiff Funds in the amount of \$7,415.00 in liquidated damages assessed on late contributions as set forth herein, plus interest from the date of delinquency through the date of payment at the rate provided in 29 U.S.C. Section 1132(g) and the Restated Agreements and Declarations of Trust establishing the NASI Funds.

20. Pursuant to the terms of the settlement documents, the Defendants are jointly and

severally liable for all amounts owed by the Defendant T & L to the NASI Funds. Accordingly, the Defendants T & L and the personal guarantors are liable to the NASI Funds for the sum of \$229,191.27, plus costs, interest and attorneys' fees.

WHEREFORE, in Count I, Plaintiff Funds pray for judgment against the Defendants T & L Fire Protection, LLC, Lawrence E. Bushaw and Catherine Louise Bushaw, jointly and severally, as follows:

A. In the amount of \$179,526.64 as currently owed under the terms of the settlement documents.

B. In the amount of \$42,249.63 for contributions due for work performed during the months of July 2018 through January 2019, plus costs, interest, and reasonable attorneys' fees assessed pursuant to 29 U.S.C. § 1132(g), the Trust Agreements and the Guidelines for Participation in the NASI Funds.

C. In the amount of \$7,415.00 for liquidated damages assessed on late contributions for the months of July 2018 through December 2018, plus costs, interest, and reasonable attorneys' fees assessed pursuant to 29 U.S.C. § 1132(g), the Trust Agreements and the Guidelines for Participation in the NASI Funds.

D. For costs, interest, and reasonable attorneys' assessed pursuant to 29 U.S.C. § 1132(g), the Trust Agreements and the Guidelines for Participation in the NASI Funds.

E. For all contributions and liquidated damages which become due subsequent to the filing of this action through the date of judgment, plus costs, interest, and reasonable attorneys' fees, pursuant to 29 U.S.C. § 1132(g) and the Restated Agreements and Declarations of Trust establishing the NASI Funds.

F. For such further relief as the Court may deem appropriate.

Respectfully submitted,

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By: _____/s/

Charles W. Gilligan

Maryland Bar No. 05682

Attorneys for Plaintiffs

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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Complaint has been served by certified mail, as required by 502(h) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1132(h) this 15th day of February, 2019 on the following:

The Office of Division Counsel
Associate Chief Counsel (TE/GE) CC: TEGE
Room 4300
1111 Constitution Avenue
Washington, DC 20224
Attention: Employee Plans

Secretary of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210
ATTENTION: Assistant Solicitor for
Plan Benefits Security

_____/s/
Charles W. Gilligan

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